RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1100409 SEPARATION DATE: 20060910

BOARD DATE: 20120411

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11B3P/Infantryman), medically separated for chronic neck pain. The CI reported carrying telephone poles for physical training during training while going through the Special Forces selection in the summer of 2001. The CI noted neck pain at that time, but continued on with training. In the winter of 2003, he noted numbness and sharp pain in his posterior left shoulder. The CI did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded “chronic neck pain secondary to cervical spine degenerative disc disease (DDD)” on the DA Form 3947 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Chronic low back pain (LBP) and benign positional vertigo, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated “chronic neck pain with tenderness of the neck centrally C3-C7 and mild paraspinal muscle tenderness” condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “Conditions have worsened. Bilateral medial nerve paralysis, lumbar disc degeneration, bilateral lateral epicondylitis, etc. Limitation to employability because of these conditions.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060530** | | | **VA (1 Mo. After Separation) – All Effective Date 20060911** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain | 5299-5237 | 10% | Intervertebral Disc Syndrome with Degenerative Arthritis, Cervical Spine | 5243 | 10% | 20061026 |
| Median Nerve Sensory Deficit of C7, Right Upper Extremity | 8515 | 10% | 20061026 |
| Median Nerve Sensory Deficit of C7, Left Upper Extremity | 8515 | 10% | 20061026 |
| Chronic LBP | Not Unfitting | | Lumbar Strain with Disc Degeneration at L4-L5 | 5010 | 10% | 20061026 |
| Benign Positional Vertigo | Not Unfitting | | Benign Paroxysmal Vertigo | 6204 | 10% | 20061030 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20061026 |
| Acid Reflux with Hiatal Hernia | 7346 | 10%\* | 20061026 |
| Scar, Status Post Right Varicocelectomy And Cord Stripping | 7804 | 10% | 20061026 |
| 0% x 2 / Not Service-Connected x 2 / Deferred x 1\*\*\* | | | |
| **Combined: 10%** | | | **Combined: 60%\*\*** | | | |

\*Removed in 2011

\*\*Decreased to 50% in 2011 when Acid Reflux with Hiatal Hernia removed.

\*\*\*Decision on service connectin for Bilateral elbow epicondylitis is deferred

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. Additionally It is a fact that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Neck Pain Condition: There were two goniometric range-of-motion (ROM) evaluations and one additional evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM – Cervical | Physical Medicine ~ 5 Mo. Pre-Sep  (20060407) | MEB ~ 6Mo. Pre-Sep  (PT 20060314) | VA C&P ~ 1 Mo. After-Sep  (20061026) |
| Flex (0-45) | No goniometrics | 45° (50°, 52°, 56°) | 35⁰\* |
| Ext (0-45) | No goniometrics | 45° (50°, 50°, 52°) | 45⁰ |
| R Lat Flex (0-45) | No goniometrics | 35° (35°, 40°, 45°) | 40⁰\* |
| L Lat Flex (0-45) | No goniometrics | 35° (35°, 40°, 45°) | 40⁰\* |
| R Rotation (0-80) | No goniometrics | 50° (52°, 54°, 56°) | 80⁰ |
| L Rotation (0-80) | No goniometrics | 50° (52°, 54°, 56°) | 60⁰\* |
| COMBINED (340) |  | 260⁰ | 300⁰ |
| C-spine MRI- degenerative disc disease, osteoarthropathy | Tenderness centrally C3-7; Mild paraspinal tenderness; sharp pain with lateral left bending; Mild pain with forward flexion; Shoulders pain on Hawkins-Kennedy impingement test; foraminal compression test positive Left shoulder blade | PT Measured ROM 20060314; MEB exam completed 20060308--\*\* Findings based on Physical Medicine exam 20060407; Mild tenderness to palpation (TTP) C5-6; TTP medial to the left scapula; sensory/motor exams nml; DTR’s wnl; uses TENS unit; | \*Pain occurs;additionally limited by pain after repetitive use; tenderness at lower nape of neck; no spasm; sensory deficit of C4-left shoulder and of C7 bilateral long fingers (median nerve); DTR 2+ and normal motor bilateral upper extremities |
| §4.71a Rating | 10% | 10% | 10% |

The CI has a long history of neck pain dating back to September 1999 in the service treatment record (STR). The CI was seen in July 2004 for a 3 month history of sharp pain in the shoulder blades with TTP at the base of the neck that radiated down to the upper back along with pain at the right deltoid and trapezius region; however, sensation and motor functioning were intact. Cervical spine x-rays in October 2004 indicated mild diffuse spondylotic change and a c-spine MRI done a week later further indicated a mild left foraminal stenosis at C6-7 caused by a broad based disc bulge. The CI had a trial of in-home cervical traction, in-clinic traction chin-neck exercises and specific without significant improvement. In February 2005 the CI was granted a 30 day profile for no ruck march, no Kevlar helmet, and no airborne operations. The CI was reevaluated by physical therapy (PT) in March 2005 and a transcutaneous electrical nerve stimulation (TENS) unit was recommended for pain control. The CI was seen for a P3 profile as he had been seen by neurosurgery, undergone aggressive PT, and had ongoing use of a TENS unit without relief of his symptoms. The CI was given a U3 profile with activity modification. A c-spine CT scan in February 2006 revealed scattered DDD and osteoarthropathy with the most severe foraminal narrowing occurring on the left at C3-4 and C6-7. The MEB examination which occurred 6 months prior to separation indicated that the CI had chronic neck pain with radiation to the posterior left shoulder which caused numbness in both hands. The MEB examiner used the physical medicine exam results from April 6, 2006 for the neck exam and dictated the April 13, 2006 MEB examination. On physical exam, the CI had neck tenderness centrally from C3 to C7, mild paraspinal muscle tenderness, and pain was elicited by motion with lateral bending to the left. Pain was also elicited during a Hawkins-Kennedy impingement test bilaterally. The VA Compensation & Pension (C&P) examination a month after separation noted that the CI still complained of neck and shoulder stiffness, constant tension, weakness, and lack of strength, elicited by physical activity and stress but also with a crushing, sharp aching pain at a level of 10 being the worst. The pain could be elicited by physical activity and stress but was relieved by rest and TENS unit. The examiner noted that at the time of pain, the CI required bed rest, although he denied that his condition caused incapacitation. The examiner further noted that severe pain in the neck and shoulder was worsened when driving long distances. Functional impairment was limited movement and endurance. The physical findings were that of pain-limited ROM with additional pain (but no additional decreased in ROM) after repetitive use.

The PEB and the VA chose different coding options but this did not significantly impact the rating. The general rating formula for diseases and injuries of the spine considers the CI’s pain symptoms “with or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease.” The PEB coded the chronic neck pain as 5299 analogous to 5237 lumbosacral or cervical strain rated 10%. The VA coded the intervertebral disc syndrome with degenerative arthritis, cervical spine as 5243 intervertebral disc syndrome rated at 10%. The CI had muscle tightness and mechanical limitation of joint and muscle along with pain at the MEB physical medicine exam. At the VA C&P examination, the CI was noted to have ROM limitation, pain and joint tenderness. All exams proximate to separation met the 10% rating criteria for localized tenderness not resulting in abnormal gait or abnormal spinal contour. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the chronic neck pain condition.

Although the CI had a sensory radiculopathy with pain and numbness consistent with objective MRI findings, there was no significant motor component to the radiculopathy. The MEB NARSUM examination noted a normal sensory examination but the VA C&P examination a months after separation showed definite sensory deficit consistent with the MRI findings of nerve encroachment. Both exams documented normal muscle strength. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications. As no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment or radiuclopathy.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were chronic LBP and benign positional vertigo. Neither of these conditions were profiled, implicated in the commander’s statement, or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for bilateral medial nerve paralysis (radiculopathy) and bilateral lateral epicondylitis. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of these conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were bronchitis, left knee pain, right ankle fracture and reconstructive surgery; variococele removal with residual testicular pain, gastroesophogeal reflux disease (GERD), and mild bilateral high frequency hearing loss. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the chronic neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the chronic Low LBP and benign positional vertigo conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the bilateral medial nerve paralysis (radiculopathy), bilateral lateral epicondylitis, bronchitis, left knee pain, right ankle fracture and reconstructive surgery; variococele removal with residual testicular pain, GERD, and mild bilateral high frequency hearing loss conditions, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110510, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

Deputy Assistant Secretary

(Army Review Boards)